

REMARKS

Applicant respectfully requests reconsideration. Claims 1-20, 22, 27-32, 43, 45, 46, 50-53, 57, 63, 70-73, 76-80, 84, 88, 95, 97, 99 and 100 were previously pending in this application. Claims 14, 15, 45, 46, 50-53, 57, 63, 70-73, 76-80, 84, 88, 95, 97 and 100 are withdrawn. Claims 1-13, 20, 22, 27-32, 43 and 99 are allowed. Claims 16 and 70 have been amended herein to recite “phosphorothioate backbone modification.” Support for this amendment can be found in claims 17 and 71 as previously pending. Claims 17, 18, 71 and 72 have been canceled herein without prejudice or disclaimer.

Applicant respectfully requests rejoinder of composition claims 14 and 15 and of the withdrawn process claims containing the same limitations as the allowed product claims. Applicant reserves the right to pursue the subject matter of the claims as previously pending, or as originally filed, in one or more continuing applications. No new matter has been added.

Claim Objections

The Examiner objected to claim 17 for being dependent on a rejected base claim. Claim 17 has been canceled herein rendering this objection moot.

Rejections under 35 U.S.C. § 112, First Paragraph

A. The Examiner maintained the rejection of claims 16, 18 and 19 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. Specifically, the Examiner asserts that the specification does not sufficiently describe the claimed genus of nucleotide backbone modifications in an immunostimulatory nucleic acid.

Applicant respectfully disagrees. However, without conceding the correctness of the rejection, and solely in the interest of expediting prosecution, claim 16 has been amended to recite “phosphorothioate backbone modification.” The Examiner has acknowledged that this claim is sufficiently described since claim 17, which recited this language as previously pending, is not rejected herein.

Claim 18 has been canceled, rendering this aspect of the rejection moot. Claim 19 depends from claim 16, which should now be allowable, and recites that the nucleotide backbone is entirely

modified. Applicant submits that since an immunostimulatory nucleic acid comprising the nucleotide sequence of SEQ ID NO:1 and including at least one phosphorothioate backbone modification is sufficiently described, as acknowledged by the Examiner, then a molecule that is entirely modified is also sufficiently described.

Accordingly, withdrawal of this rejection is respectfully requested.

B. The Examiner rejected claims 16, 18 and 19 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement. Specifically, the Examiner contends that it would require undue experimentation to practice the claimed invention because the claims are not enabled for immunostimulatory nucleic acids comprising SEQ ID NO:1 and any backbone modification.

Applicant respectfully disagrees. However, without conceding the correctness of the rejection, and solely in the interest of expediting prosecution, claim 16 has been amended to recite “phosphorothioate backbone modification.” The Examiner has acknowledged that this claim is enabled since claim 17, which recited this language as previously pending, is not rejected herein.

Claim 18 has been canceled, rendering this aspect of the rejection moot. Claim 19 depends from claim 16, which should now be allowable, and recites that the nucleotide backbone is entirely modified. Applicant submits that since an immunostimulatory nucleic acid comprising the nucleotide sequence of SEQ ID NO:1 and including at least one phosphorothioate backbone modification is enabled, as acknowledged by the Examiner, then a molecule that is entirely modified is also enabled.

Accordingly, withdrawal of this rejection is respectfully requested.

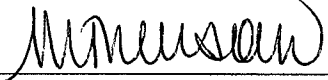
CONCLUSION

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, the Director is hereby authorized to charge any deficiency or credit any overpayment in the fees filed, asserted to be filed or which should have been filed herewith to our Deposit Account No. 23/2825, under Docket No. C1037.70044US00 from which the undersigned is authorized to draw.

Dated: 3/11/10

Respectfully submitted,

By 

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